

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Cushaw Banacek Barnett, #03403-049,)	
)	C/A No. 4:11-0894-MBS
Petitioner,)	
)	
vs.)	ORDER
)	
Bureau of Prison,)	
)	
Respondent.)	
)	

Petitioner Cushaw Banacek Barnett is a federal inmate in custody of the Federal Bureau of Prisons (FBOP). On April 15, 2011, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner alleged that he was subjected to a disciplinary action, and that the resulting punishment should be overturned because the incident report was not timely served on him. Petition for Writ of Habeas Corpus (ECF No. 1). On August 10, 2011, Respondent filed a motion to dismiss. The court granted Respondent's motion to dismiss by order filed November 15, 2011.

This matter now is before the court on Petitioner's motion to set aside and vacate judgment (ECF No. 44) and motion for writ of mandamus (ECF No. 45), which motions were filed on April 18, 2013. Petitioner asserts that a grand jury indictment was not filed within thirty days of his arrest, as mandated by the Speedy Trial Act. According to Petitioner, judgment of conviction imposed on him by the United States District Court for the District of New Hampshire in 2005 is unlawful, and as a result he currently is being detained unlawfully on a supervised release violation. Respondent filed a response in opposition to Petitioner's motion for writ of mandamus on May 6, 2013, noting that Petitioner's claims are wholly unrelated to his original § 2241 petition. The court agrees.

Petitioner's remedy, if any, is to file a motion pursuant to 28 U.S.C. § 2255 in the District

of New Hampshire before his sentencing judge. See 28 U.S.C. § 2255(a) (providing that, when a prisoner contends his sentence was imposed in violation of the Constitution or laws of the United States, he may “move the court which imposed the sentence to vacate, set aside or correct the sentence”). This court is without jurisdiction to rule on Petitioner’s motions to set aside and for a mandamus. Accordingly, the motions are **denied** without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

June 14, 2013

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.